IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3115 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NN SHUKLA

Versus

STATE OF GUJARAT

Appearance:

MR GM JOSHI for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 04/04/97

ORAL JUDGEMENT

This petition is directed against an order of compulsory retirement passed by the Director of Health, Medical Service and Medical Education on March 8, 1984 and confirmed by the Gujarat Civil Services Tribunal, Gandhinagar in Appeal No. 104 of 1984.

2. Shortly stated the facts are that the petitioner

joined services of the State Government as Junior Clerk on June 11, 1963 in the office of the Director of Health, Medical Services (Medicine Division), Gujarat State, Ahmedabad. He was then promoted as Senior Clerk and thereafter as Head Clerk. He was transferred to Government Hospital at Santarampur in Panchmahal District on July 20, 1980. It is his case that on account of prejudice and animosity at Santarampur, a false complaint was filed by one Jesingbhai Gulabbhai Patel to Dr.J.V.Dave, Superintendent of Santarampur Government Hospital wherein allegation was made that the petitioner had accepted an amount of Rs.600/- by way of illegal gratification and thus he behaved in a manner unbecoming of a Government servant. Charge-sheet was issued wherein it was alleged that one Jesingbhai Gulabbhai Patel was ordered to be appointed as a Ward Boy in the Hospital at Santarampur. His order of appointment was to be sent by post and for that purpose envelope having the Government stamp of Rs.0/35 ps. was prepared. It was duly stamped on OIGC envelope but instead of sending through post, according to the Department, the petitioner took it for personal service to Jesingbhai and at that time the petitioner demanded and accepted an amount of Rs.500/-from said Jesingbhai. It was also the case of the Department that thereafter, the petitioner demanded and accepted additional amount of Rs.100/- which Jesingbhai paid from his salary of November 1980 and even thereafter a demand of Rs.100/was made. Since Jesingbhai was not inclined to pay the said amount, he filed a complaint on December 20, 1980 before the Superintendent, Government Hospital, Santarampur pursuant to which charge-sheet was issued.

The petitioner was called upon to show cause why departmental proceedings should not be initiated and appropriate punishment in accordance with the Gujarat Civil Services (Conduct, Discipline and Appeal) Rules, 1977 should not be imposed on him.

The petitioner filled his reply on January 16, 1984 in which he made mention of some earlier proceedings and his reply of December 1982. His case was of total denial. According to him, he had neither demanded nor accepted any amount from Jesingbhai and complaint was concocted against him. He contended that it was not clear as to how Jesingbhai procured the amount which was to be paid and actually paid to the petitioner. The petitioner was involved at the instance of Mr.Dave, Superintendent of the Hospital. The petitioner stated that serious allegations were levelled against Dr.Dave and request was made to deal against him departmentally

as well as by filing criminal prosecution, but nothing was done against him. No action can be taken pursuant to a complaint which was made by the complainant at the instance of Dr.Dave. The petitioner prayed to drop the proceeding initiated against him.

Since the authorities were not satisfied with the reply of the petitioner, proceedings continued and finally the disciplinary authority came to the conclusion that the allegations levelled against the petitioner were proved and hence order of compulsory retirement was passed on March 8, 1994. The petitioner was ordered to be compulsorily retired with effect from April 1, 1984.

3. Being aggrieved by the order passed by the authority an appeal was filed which was also dismissed. Against that appellate order, this petition is filed.

4. When the petition came up for admission, notice was issued and in the meantime status quo was granted. That was on May 27, 1985. On January 21, 1986, rule was issued as no affidavit was filed till that date. Status quo was ordered to be continued. The petition has now been placed for final hearing.

5. Mr.G.M.Joshi, learned counsel for the petitioner raised various contentions. He submitted that the disciplinary authority as well as the Tribunal has committed an error of law apparent on the face of the record in holding the petitioner guilty. The petitioner had neither demanded nor accepted any amount by way of illegal gratification and the finding recorded by the authorities are improper, uncalled for and without any evidence on record. He further submitted that the Tribunal has taken into account certain facts and circumstances which were not considered even by the disciplinary authority and, to that extent, the Tribunal has exceeded its jurisdiction and the order passed by the Tribunal is without authority of law and requires interference by this court. Finally, Mr.Joshi submitted that while imposing the punishment of compulsory retirement, neither the authority nor the Tribunal has applied its mind. No reasons and/or grounds have been stated by the authorities as to why any other punishment not of a drastic nature was not imposed and what necessitated them to compulsorily retire the petitioner. Argues Mr.Joshi that even on this ground, the order of compulsory retirement deserves to be quashed and set aside and the matter needs to be remanded to the

authority below to pass an appropriate order as to the quantum of punishment.

6. I see no reason to interfere with the order passed by the authorities below.

7. The case of the department is that one Jesingbhai was appointed as a Ward Boy. The said fact is borne out from the record. When the appointment order was issued, it is alleged that the petitioner carried an envelope with him and personally delivered to Jesingbhai. According to Jesingbhai, at that time, the petitioner demanded an amount of Rs.500/- which Jesingbhai had paid. There are some omissions and contradictions regarding procuring the said amount by Jesingbhai and in whose presence the amount was given to the petitioner. In my opinion, however, the authorities were right in believing the case of Jesingbhai that the petitioner had demanded and accepted an amount of Rs.500/- from Jesingbhai. The Authorities were not conducting a criminal trial. As held by the Hon'ble Supreme Court in State of Andhra Pradesh vs. Chitra Venkata Rao, AIR 1975 SC 2151,the nature, scope and ambit of criminal trial and departmental proceedings are entirely different. Standard of proof which is required and needed in criminal trial is not necessary in departmental proceedings. Hence, when the authorities were satisfied that the evidence of Jesingbhai was believable and when Jesingbhai is believed, there is no reason to go to the other evidence or to test the veracity of his evidence in juxta position of the evidence of other witnesses. In my opinion, the authorities were also right in holding that there was no reason for Jesingbhai to falsely implicate the petitioner at the instance of Dr.Dave. One cannot ignore the relevant fact that Jesingbhai was appointed as Ward Boy, Class IV post and that too recently. He was neither knowing Jesingbhai nor officers of the hospital. It is too much to expect that conspiracy was hatched against the petitioner by Jesingbhai at the instance of Dr.Dave. If the authorities have taken the view that the evidence of Jesingbhai is to be believed and there is no reason to hold that such view is arbitrary or unreasonabe, there is no escape from coming to the conclusion that it was established that the petitioner demanded and accepted an amount of Rs.500/- from Jesingbhai. According to Jesingbhai even thereafter from November 1980's salary , he had paid additional amount of Rs.100/- to the petitioner, but as the petitioner was insisting to pay more amount and demand was made, he was fed up and hence, he made a complaint to Dr.Dave.

8. In thee light of above facts and findings the authorities have held the petitioner guilty. The said finding is a pure finding of fact which cannot be disturbed in exercise of powers under Art.226 and/or 227 of the Constitution of India.

9. My attention was invited by the learned counsel for the petitioner to the following decisions:

1. H.P.Tjhakore v. State of Gujarat,20 GLR 109;
2. Navinchandra v. Ahmedabad Cooperative Departmental Stores 19 GLR 108;

3. Pandurang Dattatraya Khandekar, vs. Bar Council of Maharashtra; AIR 1984 SC 110;

4. Rajinder Kumar v. Delhi Administration, AIR 1984 SC 1805;

5. Gujjarat Steel Tubes Ltd. v. Its Mazdoor Sabha, AIR 1980 SC 1896;

10. In Pandurang Dattatraya Khandekar's case (supra) Their Lordships observed:

" In an appeal under Section 38 of the Act this Court would not, as a general rule, interfere with the concurrent finding of fact by the Disciplinary Committee of the Bar Council of India and the State Bar Council unless the finding is based on no-evidence or it proceeds on mere conjectures and surmises. Finding in such disciplinary proceedings must be sustained by a higher degree of proof than that required in civil suit, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There should be convincing preponderance of evidence."

Other decisions have no application.

11. In my opinion, however, in the instant case the evidence of Jesingbhai has been believed by the authorities and the said finding cannot be termed as perverse or based on `no evidence'.

12. Regarding quantum of punishment, it is no doubt true that before appropriate punishment is awarded on the delinquent, the authorities are expected to apply their minds and if the punishment is harsh, grossly excessive or disproportionately high, this court in exercise of

powers under Art.226/227 of the Constitution of India can interfere. In the present case, however, in my opinion, it cannot be said that by awarding punishment of compulsory retirement, harsh view has been taken by the authority. Allegations were indeed of a serious nature. One may believe them or not is a different thing. But once the allegations are believed their seriousness cannot be overlooked. In my considered view, it cannot be said that awarding punishment of compulsory retirement can be said to be excessive or harsh. Even on that ground, therefore, the petitioner has no case and submission cannot be upheld.

13. For the foregoing reasons, I do not see substance in any of the arguments of the learned counsel for the petitioner and the petition deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, there will be no order as to costs.

14. Other side was absent. Subsequently, however, Mr.Doshit appeared.

15. At this stage, the learned counsel for the petitioner prays that interim relief may be continued for some time so as to enable the petitioner to approach higher forum. Mr.Joshi submitted that status quo was granted in May 1983. Thus, since about 12 years, interim relief is in operation. In my opinion, however, in the light of the allegations levelled and proved against the petitioner, no interim relief can be continued. Moreover, if the petitioner succeeds, he can be compensated in terms of money. But in view of the finding of guilt recorded by the authorities, he cannot be allowed to continue in service any more. Hence, prayer is rejected.

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